



## UNDERGROUND STORAGE TANKS

### *Clarifying local governmental unit's responsibility to remove tanks on properties they own*

Wisconsin Department of Natural Resources

RR-627

Fact Sheet 8

January 2000

#### **Background**

The Department of Commerce (Commerce) has the responsibility in Wisconsin to implement the federal and state regulations pertaining to the installation and removal of underground storage tanks (USTs). In instances where local governments have acquired a property, they are required by state and federal law to remove the underground tanks.

***A Local Governmental Unit (LGU)** is defined as any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewage district, certain types of redevelopment authorities, certain types of public bodies designated by a municipality, or a housing authority.*

***A Phase I Environmental Assessment** is conducted to identify areas of known or potential environmental contamination. This assessment should include, but not be limited to, reviewing records, interviewing persons, and conducting physical inspections of the property in question.*

Some local government units expressed confusion about their responsibility to remove USTs at properties that they have acquired through tax delinquency, condemnation, blight elimination, slum clearance and other such "involuntary means."

In 1994, the Wisconsin State Legislature created an exemption under the Spill Law, s. 292.11, Wis. Stats., that allows certain local government units to acquire property through tax foreclosure, eminent domain and other means specified in s. 292.11(9)(e), Stats., and not be subject to the legal requirements to investigate and cleanup the property.

Many local governments mistakenly thought that the Spill Law exemption relieved them of the responsibility to properly remove the USTs. This is not the case. The LGU should be prepared to assume the responsibility for properly removing any USTs on one of their existing properties or any property that they intend to acquire.

This fact sheet clarifies current regulations pertaining to the timing of tank removals and provides options for an LGU if an environmental assessment has been completed for the property.

#### **Guidance**

The following are some steps LGUs should consider before acquiring a property with known or suspected UST(s) in order to coordinate necessary budget expenses,



removal time frames and possible extensions for removal of the USTs.

**Be proactive!** Before acquiring the property, find out if the property has one or more registered or unregistered tanks. To do this, contact the Local Program Operator (LPO) designated by the Department of Commerce. The LPO can look through the tank registry for you. A list of LPO's and their jurisdictions can be found on Commerce's web site. You may also contact Commerce directly by phone or and staff will check the tank registry (Commerce's web site address and other information are listed below).

Finally, you may check the tank registry yourself using Commerce's web site. To determine if you have unregistered tanks on the property, you may want to hire an environmental consultant to conduct a Phase I Environmental Assessment of the property.

To find out more on how to hire a consultant, please see DNR publication SW-502, *"Selecting an Environmental Consultant."* It is available on the DNR's web site at [www.dnr.state.wi.us/org/aw/rr](http://www.dnr.state.wi.us/org/aw/rr).

**Plan!** If you have one or more tanks on your property in need of removal, make sure you budget funds to cover the cost of tank removal. In addition, develop a written plan with a timetable for tank removal and send it to the LPO as soon as possible. If the LPO receives a plan up front, a formal non-compliance order to remove the tank may not be issued. If an order to remove is issued, you may still be able to receive an extension if you have a plan for removal.

The plan should address the following:

- length of extension requested along with justification (budget constraints, formal bid process, etc.); note any seasonal constraints; extensions can be granted if the tank removal cannot take place due to environmental conditions which make excavation difficult;

- provisions to remove any existing product (gasoline, oil, etc.) from the tank and clean the tank;
- action the LGU is taking to restrict access to, or secure the property in order to minimize costs or damages that may result from unauthorized persons entering the property; and
- whether a Phase I is completed and available or any LGU action toward having a Phase I environmental assessment conducted; this shows a good faith effort to assess contamination and additional time extensions may be approved before removal has to take place.

### **Local Government Exemption to Cleanup**

Before the 1999-2001 State Budget was passed, the DNR's LGU exemption to the Spill Law did not apply if the discharge of a hazardous substance was from a federally regulated underground storage tank.

The 1999 Wisconsin State Budget removed this exclusion and now exempts a LGU from having to take action under the Spill Law to address a discharge from a federally regulated UST if they are eligible for the LGU liability exemption to the Spill Law.

For more information about the LGU liability exemption please see DNR Fact Sheet 7 (publication #RR-579), *"Liability Protection for Local Governmental Units and Certain Economic Development Corporations."*

### **FOR MORE INFORMATION...**

#### **Department of Commerce**

Website: [www.commerce.state.wi.us/Com-Environmental.html](http://www.commerce.state.wi.us/Com-Environmental.html)

Address: 201 W. Washington Ave.

P.O. Box 7837

Madison, WI 53707-7837

Phone: (608) 266-7874

Additional publications can be ordered from the Remediation and Redevelopment Program by calling the information line at 800-367-6076 (in-state long distance), or 608-264-6020 (for local or out-of-state long distance).